

PT 95-13

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

ST. PHILOMENAS ROMAN CATHOLIC)
CONGREGATION OF PEORIA)
Applicant) Docket No.: 93-72-145
) Parcel Index No.: 001-14-29-476-009
v.)
) Barbara S. Rowe
DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)
)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: J. Martin Lawless, Attorney for Applicant

SYNOPSIS: The Peoria County Board of Review/Appeals filed an Application for Property Tax Exemption with the Illinois Department of Revenue (the Department) for St. Philomenas Roman Catholic Congregation of Peoria (the applicant). The Department denied the application. The applicant filed a protest and requested a hearing. The hearing was conducted pursuant to that request. It is recommended that the Director of the Department find that the property is not in exempt ownership and use for the taxable year in question.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Peoria County permanent parcel index number 001-14-29-476-009 was not in exempt ownership and use during the 1993 assessment year was established by admission into evidence of Department's Exhibits 1 through 6.

2. On December 20, 1993, the Peoria County Board of Review/Appeals recommended a partial exemption from October 7, 1993 to December 31, 1993 for parcel index number 001-14-29-476-009. The Peoria County Board of

Review/Appeals sent the Religious Application for Property Tax Exemption To Board of Review/Appeals - Statement of Facts to the Department who received it on December 23, 1993 (Department's Exhibit 1).

3. On August 4, 1994, the Department denied the exemption finding:

THE PRIMARY USE OF THE PROPERTY IS NOT CHARITABLE.

THE PROPERTY IS NOT IN EXEMPT USE.

APPLICANT FAILED TO PROVE THAT CHARITY IS TAKING PLACE ON THIS PROPERTY. (Department's Exhibit 2).

4. On August 22, 1994, the applicant requested a hearing in this matter (Department's Exhibit 3).

5. Accompanying the request was a brief citing additional facts and authorities upon which the petitioner relies (Department's Exhibit 3(2)).

6. On October 27, 1994, the Department issued a Notice of Hearing for a hearing to take place November 16, 1994 at 1:00 p.m. at the Willard Ice Building, Springfield, Illinois. The hearing was held pursuant to that notice (Department's Exhibit 4).

7. The parcel herein question has a house on it that is adjacent to the church property (Transcript (Tr.) 11-12). The house is rented by the applicant as a residence to people that the applicant feels are needy (Tr. 24).

8. The applicant decides what amount of rent to charge these tenants based upon the renter's ability to pay. The first tenants were Nicaraguan refugees. The applicant decided to charge them \$50.00 per month because they felt that it would make the tenants feel responsible (Department's Exhibit 6, Tr. 9, 13).

9. Applicant submitted the lease executed by the Nicaraguan family. A security deposit of \$300.00 was submitted to the applicant from the family (Department's Exhibit 1(6)). The security deposit was returned to the family when they moved out of applicant's residence in 1994 (Tr. 6, 8).

10. Applicant is a religious organization and has other property tax

exemptions given by the Department (Department's Exhibit 1(5)).

11. The attorney for the applicant relies on *Children's Developmental Center, Inc v. Olson*, 52 Ill.2d 332 and writes that the court in that case stated:

This court has often held that it is the primary use of the property and not the ownership that determines it [sic] taxable status. (Citations)

We, likewise, consider that is the primary use to which the property is devoted after the leasing which determines whether the tax exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax-exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income. Following the leasing the primary use to which the property was devoted was serving the tax-exempt charitable purpose of Center. This did not destroy the tax-exempt status of the leased property although the letting produced a return to the Sisters.

This case fits our situation like a glove. The primary use to which the property is devoted after the leasing is to provide housing to needy persons unable to afford housing at regular market rates (Department's Exhibit 3(2)).

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Portions of the Illinois Statutes exempt property from taxation. In particular, 35 ILCS 19.2 (1992 State Bar Edition) exempts as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions.....

The statutes of Illinois have other provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), states:

All property of institutions of public charity, all property of

beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....

The argument by the attorney for the applicant based upon Children's Developmental Center, Inc v. Olson, 52 Ill.2d 332 is not convincing. In Children's Developmental Center, Inc, the School of St. Francis, a religious corporation, leased a portion of the convent owned by them to the Center, a charitable not-for-profit entity, for programs for educationally handicapped children.

In the instant case, there is not an exempt entity to whom the applicant has leased the property. Instead, the applicant, a religious entity, chooses the tenant based upon criteria established by the applicant. The use of the property is for residential housing.

In The People v. Deutsche Gemeinde, 249 Ill. 132, 136 the Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptance and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.

It is therefore recommended that the Director of the Department find that the property is not in exempt ownership and use for the taxable year in question. It is recommended that Peoria County permanent parcel index number 001-14-29-476-009 remain on the assessment rolls for the 1993 assessment year.